

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOHN B. ROBBINS, JUDGE

DIVISION I

CA 06-919

MAY 2, 2007

SARA L. SYNNOTT

APPELLANT

APPEAL FROM THE WORKERS'  
COMPENSATION COMMISSION  
[NO. F400107]

V.

FOX RIDGE ESTATES and  
WESTPORT INSURANCE CORP.

APPELLEES

AFFIRMED

This is the second appeal in this workers' compensation case. In the first appeal, appellant Sara L. Synnott challenged the Commission's decision denying compensability, which was based on the Commission's finding that Ms. Synnott had deviated from her employment and thus was not performing employment services at the time of her automobile accident. In *Synnott v. Fox Ridge Estates*, CA05-1153 (April 5, 2006), we reversed and remanded for the Commission to make a specific finding as to the credibility of a pivotal portion of Ms. Synnott's testimony. On remand, the Commission complied with our directive and in denying compensability, stated, "We do not find credible the claimant's testimony that she was unable to enter the parking lot in front of Walker's Cleaners." In this second appeal, Ms. Synnott again argues that the Commission erred in finding that she was not performing employment services at the time she was injured. We affirm.

Our first opinion recited the pertinent facts of this case, and only a brief summary is necessary here. Ms. Synnott was employed with appellee Fox Ridge Estates, which is a retirement home for the elderly. On the rainy afternoon of August 21, 2003, Ms. Synnott drove her personal vehicle from the retirement home to Walker's Cleaners, which is located on the right side of the road, to pick up one of the resident's dry cleaning. Instead of turning into the parking lot of the cleaners, Ms. Synnott proceeded forward with the intention of stopping at Fred's, where she would buy a Coke and then return to the cleaners. Before arriving at Fred's she was struck by another vehicle in an intersection and sustained injuries.

In her testimony, Ms. Synnott indicated that she had no choice but to go straight because several cars were backed up and it was not possible to enter the cleaners without stopping on the highway and causing a traffic hazard. However, Frankie Herring, an employee at Walker's Cleaners, testified that "the parking lot is a pretty good size lot," and that she had never seen it where it was impossible to get in. In our original opinion remanding the case to the Commission, we stated:

We are not persuaded by Ms. Synnott's contention that she was acting in the course of her employment at all times when she was running errands for the nursing home, to include a situation where she passes her destination for the sole purpose of proceeding to another location to buy a soft drink. However, Ms. Synnott makes a compelling argument that, if she was proceeding forward because it was impossible to pull into the lot of the cleaner's, the ensuing accident was compensable.

On remand, the Commission specifically discredited Ms. Synnott's testimony that she was unable to pull into the cleaner's parking lot, and was therefore advancing her employer's interest by proceeding past the parking lot to avoid a wreck. The Commission is not required to believe the testimony of the claimant or any other witness, and we defer to the

Commission's credibility determinations. *See Ellison v. Therma Tru*, 71 Ark. App. 410, 30 S.W.3d 769 (2000). Deferring to the Commission's credibility finding, we find no error in its determination that Ms. Synnott's injuries were not compensable because they were inflicted at a time when employment services were not being performed. *See Ark. Code Ann. § 11-9-102(4)(B)(iii)* (Supp. 2005). The test is whether the injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer's purpose or advancing the employer's interest directly or indirectly. *Collins v. Excel Specialty Prods.*, 347 Ark. 811, 69 S.W.3d 14 (2002). As we indicated in our earlier opinion, if the cleaners' parking lot was accessible, as the Commission has now found, then Ms. Synnott's decision to bypass the lot to buy a Coke was a departure that did not carry out her employer's purpose or advance its interest.

In her brief, Ms. Synnott acknowledges that it is the Commission's duty to judge the credibility of the witnesses. However, she maintains that the Commission arbitrarily disregarded her testimony regarding the accessibility of the lot. Ms. Synnott asserts that there were no witnesses to dispute her testimony in this regard. While Ms. Herring testified that she had never seen it where access to the lot was impossible, Ms. Synnott notes that Ms. Herring acknowledged that there were parking problems during this time frame, and further notes that Ms. Herring did not personally witness the conditions outside the store on the day of the accident. Under these circumstances, Ms. Synnott contends that reasonable minds could not conclude that she was not acting within the course of her employment when the accident occurred.

We cannot agree that the Commission arbitrarily disregarded Ms. Synnott's testimony. To the contrary, the Commission specifically considered her testimony and found it to be incredible. And while there was no testimony that directly disputed appellant's claim that the lot was inaccessible that day, it is axiomatic that the testimony of a party is never considered uncontroverted. See *Ester v. Nat'l Home Ctrs., Inc.*, 335 Ark. 356, 981 S.W.2d 91 (1998); *Jordan v. J.C. Penney Co.*, 57 Ark. App. 174, 944 S.W.2d 547 (1997). When a claim is denied because a claimant failed to show entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires that we affirm if a substantial basis for the denial of relief is displayed by the Commission's opinion. *Marshall v. Madison County*, 81 Ark. App. 57, 98 S.W.3d 442 (2003). Because the Commission's opinion in this case displays a substantial basis for denying compensability, we must affirm.

Affirmed.

GLOVER and HEFFLEY, JJ., agree.